

GOODWIN PROCTER

Date

9/29/15

Docket and File

*Kevin Nathaniel Fox***HON. KEVIN NATHANIEL FOX**  
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September 17, 2015

SEP 18 2015

**VIA FEDERAL EXPRESS**Hon. Kevin Nathaniel Fox  
United States Magistrate Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007**Re: Kaplan v. S.A.C. Capital Advisors, L.P., No. 12 Civ. 9350 (VM) (KNF)**

Dear Judge Fox:

We write on behalf of Defendant Mathew Martoma in the above-referenced matter in response to Plaintiffs' letter filed earlier this afternoon, which is attached as Exhibit A. Mr. Martoma does not object to the withdrawal of Plaintiffs' deposition notice at this time. Mr. Martoma believes, however, that Plaintiffs' request for leave to depose him after the fact discovery cut-off – and the question of whether Plaintiffs should be permitted to take such a deposition under the two circumstances set forth in Plaintiffs' letter – is premature, particularly since the issue may never require resolution by the Court. Rather, the issue should be addressed, if and when it arises, on a more developed record.

Respectfully submitted,

*Richard Strassberg / RRS*

Richard M. Strassberg

cc: All counsel (by email)

## **EXHIBIT A**

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September 17, 2015

**BY FACSIMILE**

Hon. Kevin Nathaniel Fox  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007

Re: *Kaplan v. S.A.C. Capital Advisors, L.P.*, No. 12 Civ. 9350 (VM) (KNF)

Dear Judge Fox:

We write on behalf of Plaintiffs concerning the deposition of Defendant Mathew Martoma.

The above-referenced action is a securities class action asserting insider trading claims against Mr. Martoma, his former employer, Defendant CR Intrinsic Investors, LLC, and various related parties.

Mr. Martoma was convicted last year of conduct related to the claims in this case, and is presently incarcerated. Mr. Martoma's appeal of his criminal conviction is pending, and his counsel have advised us that he intends to assert his Fifth Amendment privilege against self-incrimination in this action.

Discovery in this case is ongoing, the cutoff for service of discovery requests is next Monday, September 21, and the overall fact discovery cutoff is October 21.

In light of Mr. Martoma's stated intention to assert his Fifth Amendment privilege and the other discovery to date, Plaintiffs do not anticipate that a discovery deposition of Mr. Martoma will be productive. Plaintiffs have served interrogatories on Mr. Martoma, which should be sufficient to establish an adverse inference based on Mr. Martoma's anticipated assertion of his Fifth Amendment privilege in his responses. *See Shams v. Fisher*, 107 F. Supp. 2d 266, 270 (S.D.N.Y. 2000).

However, Plaintiffs seek leave of the Court to conduct a discovery deposition of Mr. Martoma after the fact discovery cutoff in the event that (1) his conviction becomes final prior to the trial in this matter, thereby potentially removing his ability to continue to assert his Fifth Amendment privilege, or (2) Defendants later raise arguments concerning either the sufficiency of his

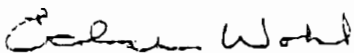
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interrogatory responses to support an adverse inference or other matters which warrant conducting the deposition.

We requested that Defendants advise us of their position with respect to the foregoing request on August 26, and contacted them again earlier this week to renew this request; they have not stated a position.

Respectfully submitted,



Ethan D. Wohl

cc: All Counsel of Record (via email)